

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.710 OF 2004

DATE OF DECISION: 23-08-2007

Kuldip Singh and others

.....APPELLANTS

VERSUS

Kartar Singh and another

.....RESPONDENTS

CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA

PRESENT: Mr. MS Uppal, Advocate
for the appellants.

HEMANT GUPTA, J.(Oral)

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court, whereby the suit against defendant No.2-Kartar Singh has been dismissed holding that the said Kartar Singh cannot be dis-possessioned from the suit land in execution of the decree passed by the learned Trial Court.

One Jodh Singh son of Bant Singh son of Mehma Singh suffered a consent decree in favour of Balla Singh son of Kartar Singh (defendant No.1) on 2-6-1992. The said decree was challenged by the plaintiffs on the ground that in fact the plaintiffs are legal heirs of Jodh Singh son of Bant Singh @ Santa Singh son of Bishan Singh and, therefore, the decree passed will not effect the rights of the plaintiffs. While setting aside the decree, the learned Trial Court decreed the suit for possession as well as for permanent injunction. The appeal filed by defendant No.2-Kartar Singh was accepted by the learned First Appellate Court wherein he was

found to be in possession of the suit land as tenant and consequently, it was held that the possession from defendant No.2 cannot be taken except in due process of law.

Learned counsel for the appellants has contended that in decree dated 2-6-1992, Balla Singh has claimed himself to be in possession of the suit land for atleast one year, prior to the grant of the decree in his favour. Therefore, it is contended that Kartar Singh his father cannot claim possession as a tenant over the suit land.

However, I do not find any merit in the argument of the learned counsel for the appellants. In the previous suit, which led to decree dated 2-6-1992, Kartar Singh is not a party. It is admitted fact that Kartar Singh continues to be recorded as person in possession as tenant even after passing of the aforesaid decree. Therefore, the tenancy rights of Kartar Singh cannot come to an end with the passing of the decree in favour of Balla Singh which has otherwise been set aside. Therefore, the learned First Appellate Court rightly held that Kartar Singh, as a tenant cannot be dis-possessioned except in accordance with law.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the First Appellate Court, which may give rise to any substantial question of law in the present appeal.

Hence, the appeal is dismissed.

August 23, 2007
jt

(HEMANT GUPTA)
JUDGE